



UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

- - -  
HONORABLE MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE PRESIDING  
- - -

ERIC ADAMS, et al., )  
 )  
PLAINTIFFS, ) **CERTIFIED COPY**  
 )  
VS. ) CV 09-9550 R  
 )  
I-FLOW CORPORATION, et al., )  
 )  
DEFENDANTS. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
MONDAY, MARCH 15, 2010  
A.M. SESSION  
LOS ANGELES, CALIFORNIA

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1                   LOS ANGELES, CALIFORNIA; MONDAY, MARCH 15, 2010

2                   A.M. SESSION

3                   - - -

4  
5                   THE CLERK: Item Number 12, C.V. 09-9550,  
6                   Eric Adams, et al. versus I-Flow Corporation, et al.  
7                   Counsel, state your appearances, please.

8                   MS. TUKLOFF: Good morning, Your Honor.  
9                   Tammara Tukloff for Defendants DJO, LLC, and DJO,  
10                  Incorporated.

11                  MS. STOREY: Good morning, Your Honor.  
12                  Joanna Lee Storey for Defendants McKinley Medical,  
13                  LLC; Moog, Inc.; and Curlin Medical, Inc.

14                  MR. KEESE: Robert Keese for the plaintiffs.

15                  MS. PATEL: Good morning, Your Honor.  
16                  Mona Patel on behalf of the Defendant I-Flow  
17                  Corporation.

18                  MR. ELDRIDGE: Good morning, Your Honor.  
19                  Brian Eldridge, also on behalf of I-Flow  
20                  Corporation.

21                  MR. SCHNEEWEIS: Good morning, Your Honor.  
22                  Gerald Schneeweis on behalf of Sorenson Medical  
23                  Products.

24                  MR. STROTZ: Good morning, Your Honor.  
25                  Peter Strotz on behalf of the moving defendants

1 Astrazeneca, LP; and Astrazeneca Pharmaceuticals, LP.

2 MR. STANLEY: Good morning, Your Honor.

3 William Stanley on behalf of Astrazeneca, LP; and  
4 Astrazeneca Pharmaceuticals, LP.

5 MR. NORTON: Good morning, Your Honor.

6 Christopher Norton on behalf of Stryker Corporation  
7 and Stryker Sales Corporation.

8 MR. SAIA: Good morning, Your Honor.

9 Steve Saia, also for Defendants Stryker Corporation  
10 and Stryker Sales Corporation.

11 MR. SABAITIS: Frank Sabaitis on behalf of Pacific  
12 Medical Corporation.

13 MR. KELLY: Good morning, Your Honor.

14 Steven Kelly on behalf of Breg, Inc.

15 THE COURT: All right. Counsel, anything to add to  
16 the documents which have been filed by any of the parties?

17 MR. KEESE: Your Honor, I would just -- and I'm  
18 sure the Court is aware of it, but I would like to point out  
19 to the Court because both in oppositions and in reply papers,  
20 it's been said that these defendants don't know what products  
21 are involved either on the pain pump side or on the  
22 medication side.

23 Specifically, Astrazeneca in its most recent reply  
24 attached a number of documents from the FDA for various years  
25 regarding the approval of the drugs that are involved here.

1 It is curious that while in their opposition and in their  
2 reply they say we don't even know what drug is involved, but  
3 they very specifically state they do know what drug is  
4 involved at that's sensorcane (phonetic), which for  
5 Astrazeneca is the brand name for Pupificane (phonetic).  
6 There are no secrets here. This is one litigation in --  
7 among many filed in the action.

8 THE COURT: This is not one litigation. This is  
9 about -- about, what, 70?

10 MR. KEESE: 140, Your Honor.

11 THE COURT: 140 litigations, all different. All  
12 different because they are different people who have been  
13 affected differently by different people and by different  
14 drugs. For instance, can you tell me what drug Carol Behary  
15 used? That's one plaintiff.

16 MR. KEESE: Your Honor, I can --

17 THE COURT: Can you tell me that?

18 MR. KEESE: Marcaine is the generic drug that she  
19 received. I doubt -- I would have to go to my records.

20 THE COURT: Made by whom?

21 MR. KEESE: I can't tell the Court that at this  
22 point in time. I can represent to the Court that the drug  
23 manufacturers involved in this case have over 95 percent of  
24 the market; that upon obtaining medical records -- and we  
25 have -- we have sought the medical records of each and every

1 plaintiff who is named in this case; that it is common  
2 practice for the doctors and the hospitals to merely enter  
3 the generic name Marcaine. And without discovery directives  
4 specifically to the drug manufacturers who supplied these  
5 drugs on a nationwide basis we are not going to be able to  
6 tell which drug it was in most of these cases.

7 We know what the product was. It is a pain pump.  
8 We know what the medication is. It is Marcaine. Under what  
9 brand name it was sold to the hospital is something that we  
10 can only discover by utilizing the officers of this Court and  
11 this lawsuit to do the discovery that's necessary to find out  
12 which --

13 THE COURT: That's not.

14 MR. KEESE: -- of these four drug manufacturers was  
15 responsible.

16 THE COURT: The purpose of lawsuit is not to do  
17 discovery, Counsel. There is no purpose of a lawsuit to do  
18 discovery. It is to decide a case. It is to decide a case,  
19 some -- some problem against -- one person against another.  
20 It is not to do discovery.

21 MR. KEESE: Your Honor --

22 THE COURT: It might or might not produce anything.  
23 We don't do that.

24 MR. KEESE: The plaintiffs involved here and our  
25 law firm have proceeded diligently to get all the information

1 we can about specific manufacturers. And I can provide the  
2 Court with specific information about pain pump  
3 manufacturers. That's easier because in many of the medical  
4 records that's so indicated, and we have even gotten billing  
5 records from the hospitals to find out which company was  
6 billed for the pain pump.

7 THE COURT: What you are asking this Court to do is  
8 asking each individual plaintiff, 140, that we are going to  
9 have into courtroom a list of about 30 companies who have to  
10 hire lawyers to come in to defend and not knowing whether or  
11 not that person ever or that -- or that defendant ever did  
12 anything to that plaintiff. Every time we are going to have  
13 to have all the lawyers come in and answer a complaint either  
14 denying that they were the person involved or denying that  
15 they did any damage to the person involved.

16 MR. KEESE: That's --

17 THE COURT: That's what lawsuits are about.

18 MR. KEESE: And that is the way this lawsuit would  
19 proceed.

20 THE COURT: Oh, calling all of them in every time?

21 MR. KEESE: No.

22 THE COURT: Some plaintiff said I did this --

23 MR. KEESE: No, I don't think that's.

24 THE COURT: -- because I want to find out whether  
25 or not this was this plaintiff who did what I claim they did.



1 MR. KEESE: I don't think that will be necessary at  
2 all, Your Honor. It will not be necessary for them all to  
3 come in when -- when Peter Smith alleges that I-Flow  
4 manufactured the product that was inserted in his shoulder,  
5 and we have the medical records and we have the I-Flow  
6 records, first of all, there probably will no dispute at that  
7 point that I-Flow's product was used.

8 Secondly, the other manufacturers -- and they are  
9 not 30; there are a dozen -- will have -- will have no need  
10 to even interfere in that particular instance.

11 THE COURT: You have that one -- then separately  
12 file that claim and bring that one defendant in to answer the  
13 claim, not some 20 or 30.

14 MR. KEESE: There are multiple common questions of  
15 law, in fact, that are going to be involved in this  
16 litigation.

17 THE COURT: No. This is not -- this is not a class  
18 action, Counsel.

19 MR. KEESE: These defendants all -- that's the  
20 reason -- that's the reason why there is now pending, and the  
21 end of March I believe there is going to be determination on  
22 whether an MDL should be set up. That's the reason why in  
23 Los Angeles County the cases have been -- have been  
24 coordinated in front of one judge under one complaint for one  
25 orderly progression of discovery, to identify the particular

1 plaintiffs and particular defendants, and even more so  
2 because these defendants all continue to deny that the  
3 Marcaine drugs destroyed cartilage in the shoulder.

4 That -- scientifically, that is a fact that's going  
5 to be a disputed issue and a hotly disputed issue, I presume,  
6 in each and every one of these cases. Experts would have to  
7 be hired and retained and their depositions taken. It is in  
8 each and every individual case, both before this Court, and  
9 if it were true, nationwide for hundreds or thousands. That  
10 is not an efficient way to administer justice. The most  
11 efficient way to do it --

12 THE COURT: I didn't make the rules, Counsel.

13 MR. KEESE: I understand that, Your Honor. But I  
14 don't think this violates the rules.

15 THE COURT: About, quote, efficiency because I  
16 didn't make the rules.

17 MR. KEESE: This doesn't violate the rules, and the  
18 Court has afforded great discretion in managing the cases  
19 before it.

20 To break this up into 142 lawsuits would inundate  
21 the Court and would cause multiple -- multiple appearances by  
22 all counsel would greatly increase the litigation, both on  
23 the part of the plaintiff and on the parts of the defendant  
24 and on the part of the Court.

25 THE COURT: Is there a class-action case pending

1       somewhere?

2               MR. KEESE:   No, there's not.

3               THE COURT:   This is not a class action.

4               MR. KEESE:   No, Your Honor.

5               THE COURT:   Then how is it going to get to the  
6 multidistrict litigation panel?

7               MR. KEESE:   It is before that panel now, and I'm  
8 not -- since I'm here I'm not involved in that particular  
9 motion.  Defense counsel can probably give you better  
10 information.  I believe there is a hearing set for  
11 March 25th.  I may be mistaken on that.  But I know that  
12 there is an application for multidistrict litigation, and  
13 I also know that, as I said, in Los Angeles County -- all of  
14 Los Angeles County state cases have been coordinated in front  
15 of one Judge and there's a petition for the cases in state  
16 court and statewide to go in front of that same Judge.

17               I could certainly -- we could certainly brief the  
18 reasons for the economy of proceeding in this kind of  
19 fashion.  It hasn't been done yet, but I think it is manifest  
20 with the number of cases that are involved here.  That's the  
21 most expeditious, expedient, and most just way of proceeding  
22 with this case.

23               THE COURT:   All right.  Anything further?

24               MR. KEESE:   If there is an adverse ruling for the  
25 plaintiff, we do request that it be without prejudice.  We

1 request leave to amend, and I would point out to the Court  
2 that as we obtain new information -- and we have obtained new  
3 information since this case came to this Court in October of  
4 last year -- the 142 plaintiffs that are named, we intend to  
5 request dismissal of a significant number of those.

6 I would request that the Court grant us leave to  
7 dismiss any plaintiff when the plaintiffs' attorneys  
8 determine in their best judgment that those specific cases do  
9 not merit proceeding, rather than making motions on a  
10 plaintiff-by-plaintiff basis.

11 THE COURT: Well, let me start by saying the  
12 plaintiff improperly enjoined 141 plaintiffs and  
13 22 defendants and the pleading lacking any fact, which  
14 establishes a common nexus among the parties. Each incident  
15 alleged in the complaint occurred at separate hospitals, in  
16 37 different states, and two different countries over a span  
17 of a ten-year period and involved different products and  
18 surgeons.

19 Okay. The various motions present overlapping  
20 issues of fact and law and as such the Court consolidates the  
21 motions and rules on them as follows:

22 Plaintiffs do not allege that any one of them were  
23 administered a particular drug or pain pump manufactured by  
24 a particular defendant. Plaintiffs plead nothing more than  
25 the sheer possibility that any particular defendant might

1 have manufactured the product plaintiffs received. As such,  
2 plaintiffs have not pleaded plausible claims for relief. And  
3 pursuant to *Ashcroft versus Eight Ball*, the entire  
4 claimplaint must be dismissed for failure to state a claim.

5 Furthermore, plaintiffs are improperly joined in  
6 this single action. Plaintiffs do not assert a right to  
7 relief, jointly or severally, and their claims do not arise  
8 out of same transaction, occurrence, or series of  
9 transactions or occurrences. As such, plaintiffs may not  
10 join in a single action pursuant to Rule 20A1 of the Federal  
11 Rules of Civil Procedure.

12 As such, plaintiffs claims are hereby severed, and  
13 any claims dismissed with leave to amend may only be  
14 maintained in going forward in discrete actions.

15 Plaintiffs can amend and plaintiffs may amend their  
16 negligence, negligence per se, and strict product liability  
17 claims to adequately plead the claims as to each individual  
18 plaintiff. Plaintiffs must also adequately plead the  
19 applicability of the delayed discovery rule of any of the  
20 claims facially barred by California's two-year statute of  
21 limitations as to each particular plaintiff, as to each  
22 particular defendant.

23 Plaintiffs may also amend their claims through  
24 negligent misrepresentation, fraudulent concealment in  
25 violation of state consumer fraud and accepted trade acts in

1 order to adequately plead plausible claims of relief as to  
2 each individual plaintiff and as to each individual  
3 defendant.

4 Plaintiffs may also claim their claim of breach of  
5 expressed warranty. Privity is generally required to state  
6 a claim for breach of expressed warranty; however, there is  
7 a limited exception for medical products designed solely for  
8 introduction into the body of a human being, as stated in  
9 *Gottsdanker versus Cutter Laboratories*, 182 Cal.App.2d 602;  
10 and recognized *Evraets versus Intermedics Intraocular, Inc.*,  
11 since -- 29 Cal.App.4th 779, since both of the anesthetics  
12 and pain pumps resign solely for introduction into the body  
13 of a human being.

14 Plaintiffs' claim for breach of an expressed  
15 warranty is barred as a matter of California law, and that is  
16 dismissed.

17 Plaintiffs' claim for breach of implied warranty is  
18 dismissed with prejudice because it cannot allege plaintiffs  
19 for breach of implied warranty against defendants because  
20 pursuant to *Blanco versus Baxter Healthcare Corporation*,  
21 158 Cal.App.4th 1039, privity is necessary -- is a necessary  
22 component of such claims, and there is no evidence to suggest  
23 that plaintiffs relied on anything other than their  
24 physician's skill and judgment in selecting the anesthetics  
25 and pumps.

1 Defendants' arguments with respect to the motion to  
2 strike are well taken under the circumstances. The motion to  
3 strike is granted and defending allegation may be omitted  
4 from any amended pleading.

5 Plaintiffs cannot allege design defect claims  
6 against the anesthetic manufacturers, nor can plaintiffs  
7 allege a failure of defendants to warn plaintiffs, the  
8 public, and the FDA.

9 Finally, plaintiffs are not entitled to a  
10 constructive trust over the defendants' profits or injunctive  
11 relief. Should plaintiffs prevail on their claims, they will  
12 be adequately compensated for their injury they personally  
13 sustained by an award of damages in the proper case, in the  
14 proper court, at the proper time.

15 All right. Counsel, you prepare the orders.

16 MR. STANLEY: Your Honor, if I may speak.

17 THE COURT: Yes.

18 MR. STANLEY: William Stanley on behalf of the  
19 Astrazeneca defendants.

20 The only thing I would like to add here is that  
21 plaintiffs' counsel just advised the Court that he does not  
22 know the identity of the anesthetic maker and, therefore,  
23 leave to amend would be futile because he is telling the  
24 Court I can't do it.

25 THE COURT: Well, he seemed to indicate that he

1 could somewhere down the line; so we will see if he can.

2 MR. STANLEY: Leave to amend in how much time, Your  
3 Honor?

4 THE COURT: I have indicated what amendments can be  
5 made and by whom.

6 MR. KEESE: Your Honor, if I may.

7 THE COURT: Against whom.

8 MR. KEESE: If I may --

9 THE COURT: These are separate actions, Counsel.  
10 This is not a single action. This is not a single action.  
11 They're misjoinder -- total misjoinder here because there is  
12 no same law or facts, particularly facts. There may be  
13 overlapping law.

14 MR. KEESE: Your Honor, may I inquire?

15 THE COURT: Yes.

16 MR. KEESE: Would refiling be under a separate  
17 individual case number for each plaintiff?

18 THE COURT: I have indicated how it is to be as to  
19 each individual plaintiff against each individual defendant  
20 so we know who is being sued and by whom because there is  
21 total failure of joinder here -- total failure of joinder.

22 I don't know what the state court does with  
23 joinder, but that's against their law, the joinder under  
24 their law. All right.

25 THE CLERK: Item number 13.



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MR. KEESE: Thank you, Your Honor.

MR. STANLEY: Thank you.

CERTIFICATE OF REPORTER

COUNTY OF LOS ANGELES )  
 ) SS.  
STATE OF CALIFORNIA )

I, SHERI S. KLEEGER, OFFICIAL COURT REPORTER, IN AND FOR THE  
UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF  
CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753,  
TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND  
CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED  
PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE  
TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS  
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATE: MARCH 18, 2009

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SHERI S. KLEEGER, CSR  
FEDERAL OFFICIAL COURT REPORTER

**PROOF OF SERVICE**  
**F.R.C.P. Rule 5(b)(2)**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 879 West 190th Street, Suite 700, Gardena, CA 90248-4227.

I hereby certify that on **December 20, 2011**, I served the document: **RIDDELL DEFENDANTS' NOTICE OF MOTION AND MOTION TO SEVER PURSUANT TO FRCP 20 AND 21; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF PAUL G. CEREGHINI; EXHIBIT "A" - "B"** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

**SEE ATTACHED SERVICE LIST**

☐ **BY MAIL (F.R.C.P. Rule 5(b)(2))**

☐ **BY OVERNIGHT DELIVERY (F.R.C.P. Rule 5(b)(2))**

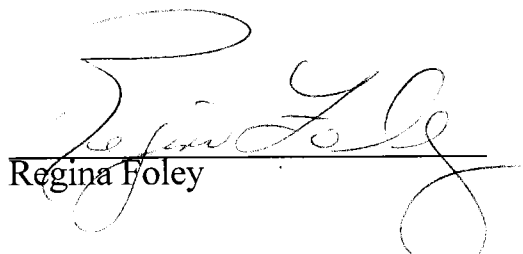
☐ As follows: I am "readily familiar" with the firm's practice of collection and processing documents for mailing. Under the practice, the envelope would be put in a sealed envelope and deposited with the U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage date is more than 1 day after date of deposit for mailing in affidavit.

☒ **BY CM/ECF:** I hereby certify that I electronically transmitted the attached document(s) to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the parties as shown on the attached Service List.

☐ **BY PERSONAL SERVICE (F.R.C.P. 5(2)):** I delivered such envelope by hand to the addressee.

Executed on **December 20, 2011**, at Gardena, California.

☒ **(Federal)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
Regina Foley

**SERVICE/MAILING LIST**

**Vernon Maxwell et al. v. National Football League, et al.**

United States District Court—Central District of California - Western Division Case  
No: CV 11-8394 R (MANx)

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